



Testimony of Dan Marshall of Marshall Music

before the

House Judiciary Committee

Constitutional Limitations on States' Authority

to Collect Sales Tax in E-Commerce

November 30, 2011

Good morning Chairman Smith, Ranking Member Conyers, and members of the Committee. My name is Dan Marshall, a small business owner from Lansing, Michigan, and I appreciate this opportunity to testify before the Committee this morning on leveling the playing field for Main Street. I am testifying today on behalf of the Michigan Retailers Association and the millions of Main Street merchants throughout the U.S.

I am the 2nd generation operator of a family-owned chain of music stores called Marshall Music, with seven bricks-and-mortar stores located throughout Michigan. My mother and father founded Marshall Music in 1948 and over the last 63 years the company has grown into the mid-west's largest retailer of band and orchestra instruments. We are an integral part of the community providing jobs, job training, paying property taxes, and even providing a service to the state by collecting and remitting sales taxes. Without businesses like mine, there would be no Main Street.

We proudly employ 300 full time and part time employees, down approximately 10 percent from our peak a few years ago. Sales volume has been as high as \$24 million and last year we did around \$18.5 million in sales through our seven store fronts, and around 5 years ago we started selling some items online through eBay averaging \$125,000 annually.

For the last 63 years, Marshall Music has operated across the state serving musicians, schools, students, teachers, enthusiasts and more. We sell music instruments, equipment, and offer performance space and lessons to shoppers and musicians. We pride ourselves on customer service and having knowledgeable associates who can help match shoppers with the right products.

I do not have to tell you that retail is a fiercely competitive industry. As we are now in one of the busiest shopping seasons of the year, we are – **and must** – stay price competitive with the guys not just down the street, but also our competitors online. But that competition is no longer on a level playing field, and the business my mother and father started is facing an unprecedented attack they never could have envisioned 60 years ago.

Today, bricks-and-mortar stores like ours are becoming the showrooms for online-only companies like Overstock, Amazon and eBay. Customers literally come into our stores every single day to play, touch, look at, and evaluate higher-end musical equipment, only to walk out of the store and go home to purchase the item from an online retailer that does not collect the state sales tax at the point of purchase.

Retailers have always had the ability to match prices. For the professional music equipment Marshall Music sells, our customers are very sophisticated on price. Our sales associates are fully aware of online prices and we are able to match those prices for customers. Matching or beating the price of a competitor – regardless of whether it is a bricks-and-mortar store or an online shop – is part of retail. Always has been and always will be. But what I cannot do is tell the customer that I do not have to charge them the state sales tax. In fact, if I did that, I'd find myself audited, fined and potentially thrown in jail.

And for those customers that are convinced they are getting a special deal when the sales tax is not collected by an online retailer, most are completely unaware that they still owe the state sales tax on that item regardless of whether they purchased the item in my store or online. But when I collect it at the register I do a service for the both the state and the customer, relieving

the latter of the burden of collecting receipts and calculating their sales tax – something they are legally required (but rarely do) for online purchases.

A recent national survey found that three-quarters of consumers were not even aware they had this obligation when filing state tax returns. This same survey found that sixty-one percent of consumers, when informed of their obligations, support Congress passing legislation that would allow states to require online-only retailers to collect state sales tax just like storefronts in the community.

Back home in Michigan we have a state sales tax of 6 percent that is tacked onto every purchase. These are funds that states use to keep our schools running and to make sure our communities stay safe. As a small business owner I would be happy if there was not a sales tax in the state, but I know that is not necessarily practical. But if we are going to pay for essential services with a sales tax, I want everybody to play by the same rules. Regardless of whether a sale occurs in a store or online, the sales tax should be the same. In a free market, government should not be giving one type of business an advantage over everyone else.

Make no mistake; I am not afraid of online competition. As I mentioned earlier in my testimony, I do sell a small number of items through eBay, and I welcome the technological advances that have enabled me to do that. But at the same time, the internet is no longer in its infancy, and it makes little sense to continue to give online sellers special treatment in the tax code to the detriment of everyone else. In fact, I would gladly collect sales taxes for the out-of-state sales I make on eBay if it meant a level playing field for everyone. The reality is that software exists today to make the calculation quite simple – it is no longer the burden it was 20 years ago, and giant online retailers like Overstock, Amazon and eBay know it.

The bottom line is that a sale, is a sale, is a sale, regardless of how the item was purchased.

To be clear, fixing this problem is **not** imposing a new tax on anyone. Forcing an online-only retailer to collect owed sales taxes is not a new tax on that online business: it is simply having them play by the same rules as bricks-and-mortar businesses who already collect on behalf of their customers.

In the past decade, this is a problem that has manifested into a direct threat to jobs on Main Street. Online commerce has been growing at a rate of over 10 percent annually, and it will only continue to sharply rise. We simply cannot compete when the government gives an unfair advantage to one segment of the retail community. Stores will continue to close down and jobs will continue to be lost in our communities until Congress closes this loophole and creates a level playing field.

Earlier this year the Michigan Retailers Association released a study that found that up to 1,600 new jobs would be created in our state if Congress took action. I am troubled that some view this issue as a tax increase – nothing could be further from the truth. This is a collection and fairness issue and it is time to close this loophole and in doing so it will help states like mine avoid the potential of raising other taxes. As I understand it, several states are considering opportunities to use any new revenues from closing this loophole to reduce the overall in-state tax burden. This would be something that all business owners would applaud.

So I am here today asking Congress to pass a national solution that levels the playing field between bricks-and-mortar stores and online-only companies. I am asking that you do this

not only for Marshall Music, but for every single book store, bicycle store and local jewelry store back in your district.

While I am aware this is an oversight hearing, I do note it is within the purview of Congress to fix this problem and protect Main Street jobs. Because of the effect of a 1992 Supreme Court decision (Quill vs. North Dakota), states alone cannot solve this problem. A number of states – California, Texas, Illinois, and South Carolina, to name a few – have recently passed state laws that deal with the unfair treatment between online-only and bricks-and-mortar retailers. The Quill decision, however, limits how far states can go. It is clearly time for, and the responsibility of, Congress to address this at a national level and provide a solution to protect jobs in each of your districts.

In particular, I note that a bipartisan bill, H.R. 3179, the Marketplace Equity Act, gives every state the option to fix this issue. H.R. 3179 allows the 24 states that belong to the Streamlined Sales and Use Tax Agreement to level the playing field. As well, H.R. 3179 gives simple options to the remaining 21 states that are not party to, and many never join, the Streamlined Sales and Use Tax Agreement in order to begin treating all retailers equally. The legislation is a breakthrough in that it supports the rights of individual states to determine what is the best way for them to solve this problem. H.R. 3179 is also supported by a broad range of national associations, state retail organizations, and companies. I have attached a copy of their letter of support to my testimony and would ask that it be submitted for the record.

In closing, I want to thank the Committee for providing me this opportunity to appear before you this morning. Main Street merchants are asking Congress to close this loophole and give us a level playing field to compete on.

I look forward to answering any questions you may have.

November 2, 2011

The Honorable Patty Murray
Co-Chair, Joint Select Committee on Deficit Reduction
U.S. Senate
Washington, DC 20510

The Honorable Jeb Hensarling
Co-Chair, Joint Select Committee on Deficit Reduction
U. S. House of Representatives
Washington, DC 20515

Dear Senator Murray and Representative Hensarling:

The undersigned companies and state and national trade associations write today to ask that you include in your recommendations to the House and Senate a provision that would close a loophole harming traditional bricks-and-mortar retail businesses while assisting the states in collecting approximately \$23 billion in uncollected state sales taxes that are currently due on Internet and catalogue sales.

At issue is a decades-old Supreme Court ruling, which was issued in 1992, before the pervasiveness of today's Internet commerce, and which prohibits states from requiring remote sellers to collect sales and use taxes owed on purchases from out-of-state vendors. This loophole has created an uneven playing field for bricks-and-mortar retail businesses that face a price disadvantage, has led to budget shortfalls for states as sales taxes go uncollected, and an undue burden on consumers who do not realize they owe the sales tax if it is not collected by the seller, leaving them to face penalties and increased scrutiny from state auditors. Main street retailers are jeopardized as a result of the insurmountable price disadvantage created by this government subsidy along with 15 million bricks-and-mortar retail jobs and one in 10 jobs related to shopping centers. Recent data suggests that one in four jobs is directly or indirectly related to the retail sector.

Several bills are pending in the House and Senate that would give states the authority to manage their sales tax laws while closing this loophole. H.R. 3179, the Marketplace Equity Act, introduced by Reps. Steve Womack (R-AR) and Jackie Speier (D-CA) provides an option for every state to simplify its sales tax statute and assist vendors with compliance, while providing for a robust small business exemption.

S. 1452 and H.R. 2701, the Main Street Fairness Act, introduced by Sen. Dick Durbin (D-IL) and Rep. John Conyers (D-MI) would sanction a 24-state compact called the Streamlined Sales and Use Tax Agreement, providing these states with authority to require collection on remote sales. Senators Durbin, Enzi, and Alexander are also working on a bi-partisan solution, the Marketplace Fairness Act. While all these bills generally accomplish the same goal, they have one item in common: only Congress can grant this authority to the states.

As you seek solutions to address the federal budget, any final product will undoubtedly have an impact on the states, which are likewise facing their own budget crises. Consistent with the goals of the Joint Select Committee on Deficit Reduction, Congress has an opportunity to help the states resolve their own budget shortfalls by enhancing states' rights over sales tax collection authority and in the process closing a loophole that will level the playing field for all merchants. The Joint Select Committee on Deficit Reduction can easily include this authority in its recommendations to the full House and Senate, and we urge you to do so.

Sincerely,

NATIONAL TRADE ASSOCIATIONS

American Booksellers Association

American Specialty Toy Retailing Association

American Veterinary Medical Association
Association for Christian Retail
Food Marketing Institute
Independent Running Retailer Association
International Council of Shopping Centers
National Association of Chain Drug Stores
National Association of College Stores
National Association of Real Estate Investment Trusts
National Bicycle Dealers Association
National Grocers Association
National Home Furnishings Association
National Retail Federation
North American Retail Dealers Association
Outdoor Industry Association (OIA)
Pet Industry Joint Advisory Council
Professional Beauty Association
Real Estate Roundtable
Retail Industry Leaders Association
Soccer Dealer Association

STATE TRADE ASSOCIATIONS

Alabama Retail Association
Alliance of Wisconsin Retailers
Arizona Retailers Association
Arkansas Grocers and Retail Merchants Association
California Business Properties Association
California Retailers Association
Carolinas Food Industry Council

Colorado Retail Council
Connecticut Retail Merchants Association
Florida Retail Federation
Georgia Retail Association
Idaho Retailers Association
Illinois Retail Merchants Association
Indiana Retail Council
Iowa Retail Federation
Kentucky Retail Federation
Los Angeles Area Chamber of Commerce
Louisiana Retailers Association
Maryland Retailers Association
Michigan Retailers Association
Minnesota Retail Association
Missouri Retailers Association
Mountains and Plains Independent Booksellers Association
Nebraska Retail Federation
New Atlantic Independent Booksellers Association
New England Independent Booksellers Association
New Jersey Retail Merchants Association
North Carolina Retail Merchants Association
North Dakota Retail Association
Ohio Council of Retail Merchants
Pacific Northwest Booksellers Association
Pennsylvania Retailers' Association
Retail Association of Mississippi
Retail Association of Nevada

Retail Council of New York State
Retail Merchants of Hawaii
Retailers Association of Massachusetts
Rhode Island Retail Federation
South Carolina Retail Merchants Association
South Dakota Retailers Association
Southern Independent Booksellers Alliance
Tennessee Retail Association
Texas Retailers Association
Utah Food Industry Association
Utah Retail Merchants Association
Vermont Retail Association
Virginia Retail Merchants Association
Washington Retail Association
West Virginia Retailers Association
Wyoming Retail Association

COMPANIES

Abbell Credit Corporation, Chicago, IL
Acadia Realty Trust, White Plains, NY
AutoZone
Barnes and Noble
Bed, Bath, & Beyond
Best Buy
Blake Hunt Ventures, Inc., Danville, CA
John Bucksbaum, Private Real Estate Investor/Developer, Former Chairman and CEO of General Growth Properties, Inc., Chicago, IL

Build-A-Bear Workshop®, Saint Louis, MO
CBL & Associates Properties, Inc., Chattanooga, TN
Cencor Realty Services, Dallas, TX
Chesterfield Blue Valley, LLC, St. Louis, MO
The Container Store, Dallas, Texas
The CortiGilchrist Partnership, Ilc, Al Corti, Principal, San Diego, CA
Dick's Sporting Goods
DDR Corp., Beachwood, OH
DLC Management Corp., Tarrytown, NY
Donahue Schriber Realty Group, Costa Mesa, CA
Edens & Avant, Columbia, SC
Evergreen Devco, Inc., Glendale, CA
Fairfield Corporation, Battle Creek, MI
Federal Realty Investment Trust, Rockville, MD
FedTax, David Campbell, CEO
L. Michael Foley and Associates, LLC, La Jolla, CA
Forest City Enterprises, Inc., Cleveland, OH
Gap Inc., San Francisco, CA
Garrison Pacific Properties, San Rafael, CA
General Growth Properties, Chicago, IL
Glimcher Realty Trust, Columbus, OH
The Greeby Companies, Inc., Chicago, IL
Hart Realty Advisers, Inc., Simsbury, CT
David Hocker & Associates, Inc., Owensboro, Kentucky
D. Talmage Hocker, The Hocker Group, Louisville, KY
Kimco Realty Corporation, New Hyde Park, NY
Limited Brands, Columbus OH
Lowe's

Malcolm Riley and Associates Los Angeles, CA
Mary Lou Fiala, CEO, Loft Unlimited, Ponte Vedra Beach Florida
Marketing Developments, Inc. MI
Planning Developments, Inc. MI
JC Penney
Petco
The Pratt Company, Mill Valley, CA
The Rappaport Companies, McLean, VA
REI (Recreational Equipment, Inc.)
Reininga Corporation, Healdsburg, CA
Safeway, Inc.
Sears Holdings
The Seayco Group, Bentonville, AK
The Sembler Company, St. Petersburg, FL
Simon Property Group, Indianapolis, IN
Steiner + Associates LLC, Columbus, Ohio
Stirling Properties, Covington, LA
Tanger Factory Outlet Centers, Inc., Greensboro, NC
Target Corporation, Minneapolis, MN
Taubman Realty Group, Bloomfield Hills, MI
Tractor Supply Company
Vestar Development Co. - Phoenix AZ
Wal-Mart Stores, Bentonville, AR
The Weitzman Group, Dallas, Texas
Western Development Corporation, Washington, DC
Westfield, LLC., Los Angeles, CA
WDP Partners, LLC, Phoenix, AZ
Wolfe Properties, LLC, St. Louis, MO